

Nippon Steel/U.S. Steel: Legal Challenge to Biden Ban Faces Tough Odds

Nippon Steel (TYO: 5401) faces a tough task in overturning President Joe Biden’s decision to block its proposed \$14.9 billion acquisition of U.S. Steel (X), according to a *Capitol Forum* analysis.

Joined by its merger partner, Nippon Steel yesterday filed a [suit](#) asking the U.S. Court of Appeals for the District of Columbia to void Biden’s Friday [order](#) against the deal. In the suit, the companies described as a “sham” the Committee on Foreign Investment of the United States’ (CFIUS) national security review of the transaction, saying it was skewed by presidential politics.

“The President and CFIUS corrupted and compromised a critical mechanism for the protection of America’s national security in order to serve the President’s personal political agenda,” according to the suit.

Separately, the companies sued in federal court in Pennsylvania rival Cleveland-Cliffs; its CEO, Lourenco Goncalves; and United Steelworkers President David McCall. In that suit, Nippon Steel and U.S. Steel accuse the defendants of a “no-holds-barred campaign” to monopolize American steel markets by opposing the deal.

Courts have historically been reluctant to overturn presidential decisions tied to national security. Aware of this wide-ranging authority, companies have rarely appealed a president’s decision against a proposed merger on national security grounds. In the one recent case when a company did—Ralls Corporation’s 2014 challenge to an order by President Obama—it lost.

Nippon Steel and U.S. Steel’s “chances of success in having a court overturn the President’s CFIUS decision would appear slim,” said Harry Broadman, a member of the interagency panel during the Clinton administration. That’s especially true “given the legal precedent set in the Ralls case, where the courts largely deferred to the government’s national security arguments.”

If Nippon Steel and U.S. Steel share that pessimism, it’s not apparent in their appellate suit. The companies argue that the president acted “ultra vires,” meaning beyond the scope of his legal authority, by announcing his decision before CFIUS had fully reviewed evidence of potential national security risks.

The companies claim the review process violated their right to due process under the Fifth Amendment. They cite Biden’s public opposition to the deal months before the CFIUS review began, including campaign statements pledging to keep U.S. Steel domestically owned.

The companies also accuse CFIUS of breaching confidentiality, failing to consider their proposals to address security concerns and disregarding obligations under federal laws.

The companies attempt to turn the *Ralls* decision into an asset, citing it eight times in their complaint. The 2014 opinion by the D.C. appeals court did more than establish the president's power in making decisions based on national security. It also marked a turning point in CFIUS-related litigation, emphasizing that even in national security cases, affected parties must be afforded due process.

The court said the company was entitled to procedural safeguards, including a more open review process and access to unclassified evidence the president used in making his decision.

The comparison between the two cases has its limits. The earlier deal involved Ralls, a company owned by two executives from China-based Sany Group, attempting to acquire privately-owned wind energy projects in Oregon, some of which were near a U.S. naval training facility.

"It will be interesting to see if the parties can articulate an alternative argument that isn't addressed under the *Ralls* precedent," noted Christopher Swift, a national security lawyer at Foley & Lardner.

The review process and the politics that buffeted it have given the companies some material from which to build a case.

The Defense, State, and Treasury departments supported the deal and found to be sufficient the mitigation proposed by the companies to address security concerns, according to the steel companies' suit.

However, U.S. Trade Representative Katherine Tai opposed the transaction and "was advancing national security objections, apparently at the behest of the White House," the suit says.

Before the review was completed, Treasury Secretary Janet Yellen, who chairs CFIUS, shared Biden's view that U.S. Steel "should remain in U.S. hands."

Treasury, the White House's National Security Council and the office of the USTR didn't respond to requests for comment. CFIUS doesn't comment on its reviews.

The targets of the suit in Pennsylvania struck back at the steel companies.

In a statement, McCall, the USW president, said the union is reviewing the complaint and "will vigorously defend against these baseless allegations."

Cleveland-Cliffs' Goncalves similarly described the suit as unnecessary.

“Nippon Steel and U.S. Steel continue to play the blame game in a desperate attempt to distract from their own failures,” he said in a [statement](#). The two lawsuits “represent a shameless effort to scapegoat others for U.S. Steel’s and Nippon Steel’s self-inflicted disaster.”

“Clear” motivation. In its appellate suit, Nippon Steel and U.S. Steel say that Biden and senior administration officials warped the CFIUS review process to fulfill a promise made to USW leadership during the 2024 election cycle. The union was a key backer of Biden’s re-election campaign, and when he dropped out, Vice President Kamala Harris’ presidential bid as the Democratic nominee.

The deal became politically charged in the swing states of Pennsylvania, Ohio and Michigan soon after the companies [unveiled](#) it in December 2023.

On March 14, 2024, Biden publicly [expressed](#) his desire that U.S. Steel continue to be American-owned and -operated. That was before the companies say the CFIUS review had gotten off the ground. Six days later, the USW [endorsed](#) Biden for president.

“The President’s motivation was clear: politics,” according to the suit.

Both Harris and President-elect Donald Trump during the campaign also came out against the deal.

Biden’s bias violated the companies’ rights under the Fifth Amendment, they say.

“Meaningful consideration free from prejudice is a basic tenet of due process,” the complaint asserts. The companies also argue that Biden’s March announcement contravened the fundamental principle of equal protection under the law.

The complaint alleges that CFIUS failed to conduct a risk-based national security analysis and deviated from established procedures by disregarding the companies’ evidence and mitigation proposals. Career national security professionals were sidelined in favor of political appointees raising unsupported objections, according to the complaint.

“With the outcome a foregone conclusion, it is not surprising that the record lacks the factual support necessary for CFIUS to act under Section 721,” the complaint states.

The Defense Production Act's [Section 721](#) outlines the CFIUS's review process and gives the president decision-making authority over proposed foreign investments that could raise national security issues.

The companies in their suit criticize the behavior of senior Biden administration officials, particularly Tai, whom they said didn't engage with them over her concerns.

The complaint also accuses CFIUS of breaching confidentiality protocols by sharing details of the review with the USW leadership, a vocal opponent of the transaction.

Biden's decision. In his order, Biden said the deal had to be abandoned because the companies post merger "might take action that threatens to impair the national security of the United States." The order didn't specify what action the president was referencing.

Initially, national security experts [said](#) the transaction raised questions about the vulnerability of America's steel supply and prices and sensitive business information that could be shared with Nippon steel's operations in China. But these issues could be resolved with CFIUS-imposed conditions, the experts said at the time.

U.S. Steel manufactures high-strength material for critical military applications, including armored vehicles and naval ships. Although it doesn't directly supply steel to the U.S. government, the company maintains extensive supply chain relationships with government contractors like General Motors (GM) and DuPont (DD).

The administration said foreign ownership of U.S. Steel could compromise the reliability of these supply chains during crises. Gary Works, the company's largest steel production facility, has an annual capacity of up to 7.5 million net tons of raw steel. This substantial output is essential to supporting the U.S. automotive industry and other key sectors. Critics, however, argued that fears about the supply chain were misplaced, given Japan's status as a close ally.

The administration also raised concerns about how foreign ownership of U.S. Steel might compromise national security by affecting the availability of steel essential for critical infrastructure and defense projects. Nippon Steel attempted to address these issues with commitments to [invest](#) over \$2.7 billion in U.S. Steel facilities and honor union contracts. But such assurances didn't quell the protests of the deal's critics.

The decision to block the transaction could indicate that competition and national security concerns are increasingly intertwined.

Broadman, who's now with the RAND Corporation and WestExec Advisors, said the deal "could increase market concentration among domestically-owned steel companies, potentially putting upward pressure on prices paid by American business customers producing national security-related steel products."

Some lawyers who defend deals reviewed by CFIUS said they were concerned that the process following Biden's decision wouldn't be independent of politics or driven by evidence.

"Any telegraphed viewpoint by the president may be perceived as a final determination, even though credible evidence could later prove the transaction does not threaten U.S. national security," said Andrew Astuno, counsel at the law firm Fluet and a former Treasury official responsible for CFIUS reviews.

At the very least, legal and policy experts said, Biden's decision signals a broad shift in U.S. foreign investment policy.

A CFIUS review "was already a sensitive issue for foreign investors out of the Middle East, Taiwan, Singapore, and the like – let alone China," said Dan Anziska, a partner at Troutman Pepper Locke who specializes in the panel's deal reviews. "Now the question is, Has [the] Rubicon been crossed where there will be an increased likelihood of rejecting investments from ally nations?"